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[illegible],
Petitioners,

vs.

[illegible], et al.,
Respondents.

RESPONDENTS' BRIEF

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In the
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-292

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA,
a Religious Body, et al.,
Petitioners,
vs.
DIONISIJE MILIVOJEVICH, et al.,
Respondents.

RESPONDENT'S BRIEF

QUESTIONS PRESENTED

1. Should a Civil Court enforce a church decision which, in disregard of church constitutional provisions, liquidates an autonomous diocese of the church and effects a seizure of its property?

2. Is it not error for a Civil Court to purport to make a finding, after a dissolution of an independent diocese, that "religious unanimity" exists between the various adherents of a faith or should this be left solely to the individual members of the diocese?

3. Should a Civil Court enforce the disciplinary judgment of a church made in violation of the church penal code and constitution?

4. Should a Civil Court enforce a church disciplinary judgment removing a cleric without notice or opportunity to confront his accusers or participate in a hearing all in contravention of codified church procedure?

STATEMENT OF THE CASE

The American-Canadian Diocese has the only Diocesan Constitution in the Serbian Orthodox Church which guarantees "full administrative freedom" for the Diocese which is governed by an elected Diocesan Assembly and Council. The properties of the American-Canadian Diocese must be used only for the purposes designated by the Constitution of the Diocese. (A. 1806). The Constitution may be amended only by the Diocese, subject to the approval of Belgrade. (A. 1806-7).

The Serbian Orthodox Church ("Belgrade"), one of fourteen national Orthodox churches, first affiliated with the American-Canadian Diocese after World War I and approved the Diocesan Constitution with its reservation of self government in 1928. (A. 1806-7). The Diocese, prior to World War I, was self governing when it was affiliated with the Russian Orthodox Church. (A. 1803-4).

The Dissolution of the American-Canadian Diocese

On May 10, 1963, Belgrade unilaterally amended the Serbian Church Constitution so as to dissolve the American-Canadian Diocese by replacing it with three new dioceses. This litigation began, in July, 1963, when Petitioner Firmilian, the alleged administrator appointed by Belgrade to effectuate the dissolution, attempted to seize the bank accounts and substantial real property of the American-Canadian Diocese including substantial parcels located in California, Illinois and Pennsylvania.[1] Each of the Courts below found, under the express provisions of the Serbian Church Constitution and the Diocesan Constitution, that Belgrade, in dissolving the Diocese, had acted without authority and in violation of the rights reserved by the Diocese in its Constitution.

In August, 1963, the American-Canadian Diocesan Assembly passed a resolution refusing to recognize the division of the Diocese and providing three months for Belgrade to rescind. Belgrade refused to reconsider. In November, 1963, the American-Canadian Assembly enacted constitutional provisions providing for amendment of the Diocesan Constitution without approval by Belgrade. (A. 1813).

The Proceedings Against Bishop Dionisije

In connection with the dissolution of the American-Canadian Diocese, Belgrade transferred its long time Bishop, Dionisije, and instituted penal proceedings against him, allegedly suspending him until his trial on unstated charges. Bishop Dionisije refused to accept the illegal division of the Diocese. He also refused to accept his suspension because he was not given a prior hearing as required by the Belgrade Constitution and the Church Penal Code. The Diocesan Council of the American-Canadian Diocese petitioned the Holy Synod (a Bishop's trial court) to send a commission to investigate the charges against Bishop Dionisije as soon as possible. (A. 1811).

The Holy Synod appointed a commission to investigate the charges on June 13, 1963, and the commission, without prior investigation of the charges, met with Bishop Dionisije on July 5. The Bishop requested written copies of the charges against him. The commission, which had the written charges in its possession, refused to show them to the Bishop. The day following the half-hour meeting, the commission issued a public proclamation that Bishop Dionisije was guilty of violations meriting stripping of his episcopal rank and his excommunication from the Church. (A. 1812).

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[1] The STATEMENT OF THE CASE by Petitioners contains many errors and does not set forth the facts as found by the Illinois Supreme Court. We append as Appendix A a complete STATEMENT OF THE FACTS with record and appendix references which support the findings of fact made by the Illinois Supreme Court.

On July 27, 1963, the Holy Assembly of Bishops, without notice to Bishop Dionisije, voted to depose him and replaced him with Firmilian. (A. 1812-3).

In September, 1963, Belgrade appointed a prosecutor to draft an indictment against Dionisije. Dionisije again requested copies of "Enclosures" (the written complaints and letters of his accusers) referred to in the indictment and also requested a six month extension to answer because of the indictment's length and his incapacity due to a recent automobile accident. Belgrade refused to provide the "Enclosures", but granted a thirty day extension. In January, 1964, Dionisije wrote that he could not respond without the "enclosures", that the Synod and the Assembly of Bishops were violating the Church Penal Code and Constitution, that no investigation had been made, and that he could not bring witnesses 6000 miles to Belgrade for trial. (It should be noted that Bishop Dionisije had not traveled to Yugoslavia after World War II because he had been declared an enemy of the State by the Yugoslavian government. (R. 8668, A. 605; R. 9116-9, A. 642-3))

On March 5, 1964, without notice to Dionisije, the indictment was verbally amended to include alleged offenses committed since the indictment was drafted. The Assembly of Bishops considered the amended indictment, found Bishop Dionisije guilty of all charges, removed his Bishop's rank, and returned him to layman status. Among those who voted on Biship Dionisije's guilt were Bishops who had been members of the investigating commission and the Prosecutor who had drafted the indictment. (A. 1814).

The Illinois Supreme Court found that the procedure which resulted in Bishop Dionisije's removal and defrockment was not in accord with the prescribed procedure of the constitution and penal code of the Serbian Orthodox Church and that the finding by the trial court that the removal of Dionisije was not the result of fraud, collusion or arbitrariness was contrary to the manifest weight of the evidence. (A. 1826-7). The Supreme Court found that Dionisije had been suspended, deposed and defrocked by the wrong tribunal, without notice or opportunity to review the charges against him, without an opportunity to make a defense, without an opportunity to confront his accusers and upon an amended indictment that was never submitted to him for response; all in violation of codified procedure.

The Illinois Supreme Court thus refused to permit enforcement of Belgrade's mandate requiring the dissolution of the Diocese, expulsion of Dionisije and distribution of diocesan property without prior consent of the members of the diocese.

SUMMARY OF ARGUMENT

The Courts below, within the limits of permissible review, found the attempted dissolution of the American-Canadian Diocese by Belgrade to be in clear and palpable excess of its very limited powers as set forth in the Constitutions. The Diocese existed independently prior to affiliation with Belgrade. Belgrade has repeatedly recognized the autonomy and independence of the Diocese. The Constitutional provisions are clear and explicit.

Prevented from seizing the Diocese assets by the Diocesan Authorities, Belgrade attempted to accomplish the same result by penal proceedings against Bishop Dionisije.

Under the guise of a temporary administrator, appointed incidental to the penal proceedings, Belgrade sought to deprive the American-Canadian congregations and their members of participation in the future management of the property, and ultimately, to distribute the diocese property to the three newly created dioceses. This was improper.

Moreover, as Belgrade had excised the American-Canadian Diocese from its Constitution and the Diocesan Assembly voted to deprive Belgrade of the right to appoint a Bishop for the Diocese, the Illinois Supreme Court erred in finding that "religious unanimity" exists. This is beyond the scope of a civil court.

The Constitution and Penal Code of the Serbian Orthodox Church provide explicit procedures for disciplinary proceedings against a Bishop. The evidence established that, contrary to these procedures, Dionisije was convicted without notice of the charges or opportunity to defend by the wrong tribunal and denied appeal. Guilt was predetermined. The Court below, thus properly refused to enforce Belgrade's action against Dionisije as the disciplinary proceedings against him were tainted by fraud, collusion or arbitrariness. In so ruling, the civil courts did not consider the guilt or innocence of Dionisije or any religious question.

ARGUMENT

I.

THE ATTEMPTED DISSOLUTION OF THE AMERICAN-CANADIAN DIOCESE AND DISTRIBUTION OF ITS ASSETS WAS FORBIDDEN BY THE INDEPENDENCE AND AUTONOMY OF THE DIOCESE.

Each Court below has held that Belgrade's attempt to dissolve the Diocese and to distribute its assets was an act contrary to the Diocesan and the Belgrade Constitutions. The examination of church constitutions to resolve such property disputes has been approved by this Court. *Maryland and Virginia Eldership of Church of God* v. *Church of God,* 396 U.S. 367, 90 S.Ct. 499 (1970).

The American-Canadian Diocese had an independent existence before its 1921 affiliation with the Serbian Orthodox Church. This administrative and executive independence was recognized by Belgrade at the time of the adoption of the American-Canadian Constitution. Under the terms of that Constitution, Belgrade had no right to abrogate the American-Canadian Diocesan Constitution, dissolve the Diocese and distribute its property to three newly created dioceses, although, Belgrade had the right to disassociate itself from the American-Canadian Diocese, if it so chose.

The Illinois Supreme Court detailed the early historical development of the American-Canadian Diocese and the unique relationship between it and the Serbian Church in Belgrade. (A. 1803-1807) The Illinois Supreme Court found that the American-Canadian Diocese "manifested a clear intention to retain independence and autonomy in its administrative affairs. . . ." (A. 1829) The declarations by Belgrade over the years fully support these findings:

1) In 1928, Belgrade approved the American-Canadian constitution confirming the intent of the parties that the constitution serve as the "organizational regulation" for the "autonomous organization" of the Diocese. (DX 51, 1058)[1]

2) In 1945, Belgrade published this statement: "Furthermore, the American-Serbian Orthodox Diocese which is in organic ties with the Serbian Patriarchate, has its separate constitution which in reference to its external independent activities is responsible and governed only in accordance with the laws of the United States of America." (DX 220, A. 1697)

3) In 1963, Belgrade stated: "I. That all of the rights of the former American-Canadian Diocese as they relate to the autonomy, in the administrative sense, remain unchanged. The only exception is the forming of three diocese and II. That the Constitution of the former American-Canadian Diocese remains the same and that the dioceses in America and Canada will not, in an administrative sense [the management (or direction) of the properties be managed (or directed) in the same manner as those in Yugoslavia]." (PX 128, A. 1446)

Petitioners, in arguing that control resides in Belgrade, rely upon the inapplicable provisions of the Belgrade Constitution governing dioceses in Yugoslavia, which provisions are separate and distinct from that concerning the

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[1] Record citations where Exhibits were admitted are in Appendix B.

American-Canadian Diocese, but ignore the clear non-religious provisions of the American-Canadian Diocese Constitution reserving exclusive administrative and executive authority, to-wit:

1) Article 1 provides that the relationship with Belgrade is limited to "ecclesiastically-judicially" affairs. (A. 1021)

2) Article 3 provides that the Diocese "enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its Church, school and other diocesan institutions and all funds and beneficences, through its organs, but in accordance with the laws of this Constitution and in agreement with the laws of the United States of America and Canada." (A. 1021)

3) Article 22 states "The Diocesan Assembly (Sabor) upon being duly constituted, performs the following . . . 7) controls the assets of the diocese, the entire past year's work of the Diocesan Council and its organs; 8) decides on changes and amendments to the Constitution with the approval of the Holy Bishop's Assembly of the Serbian Patriarchate." (A. 1029)

4) Articles 146, 147, 149 and 150 provide that the Diocese owns its property separate and apart from the property owned by the local congregations. The Diocese has no rights in the property of the congregations and "the above mentioned property and its assets are to serve exclusively for the purposes designated by the Statutes of this Constitution and cannot be used for any other purpose." Each are to title their individual property in their own names. (A. 1066-7)

Articles 5, 8, 15 and 24 establish the Diocesan Assembly and Diocesan Council as the independent and controlling legislative and executive authorities for the Diocese. Article 71 gives the Diocesan Council final authority over membership.[2]

The administrative and executive independence and autonomy of the American-Canadian Diocese is manifestly clear. The Illinois Supreme Court, as well as every court which has ruled upon this case, read Articles 12, 14, and 15 of the Serbian Church Constitution and concluded that while the dioceses in Yugoslavia are subject to the Church in a "hierarchical and administrative aspect" the American-Canadian Diocese, prior to the amendment of May 10, 1963, was under the jurisdiction of the Serbian Orthodox Church "only in spiritual and hierarchical concerns". (A. 1830-31)

Only the Church National Assembly (Sabor) composed of members from all of the congregations in the Diocese, could initiate and pass amendments to the Diocesan Constitution. Belgrade's interest was limited to approval or rejection of such amendments.

Congregations and dues paying members have a right to control all Diocesan property in America and Canada through representation in the one Diocesan Church National Assembly. Such right is guaranteed by the Constitution. Belgrade's amendment deprives the congregations of this right to participate in the control of the total property by limiting the participation of any congregation to representation in one of the three new regional dioceses. A California Congregation, which currently has a right to representation in the control of the Pennsylvania and Illinois property, is deprived of that right under the illegal Belgrade amendment.

The Courts below properly found the dissolution of the American-Canadian Diocese to be "in clear and palpable excess" of Belgrade's authority.

II.

BELGRADE SEEKS TO ACCOMPLISH, THROUGH ITS PENAL POWERS, A REORGANIZATION AND DISTRIBUTION OF ASSETS UNATTAINABLE UNDER ITS LEGISLATIVE-EXECUTIVE POWERS.

The Belgrade Church lacked either the administrative or executive authority to dissolve the American-Canadian Diocese and distribute its assets to the three newly created dioceses. The attempt was opposed by the duly constituted boards and authorities of the American-Canadian Diocese from the outset. Belgrade sought to accomplish the illegal dissolution and distribution of assets by perverting its penal authority.

The three newly appointed administrators, including Firmilian, reported to the Synod, on June 10th, that at the June 6th meeting of the Diocesan Plenum almost all of the members of the Diocesan Counsel and the majority of all congregations in the American-Canadian Diocese believed that the decision was "made against the constitution of our Diocese and, therefore, cannot be accepted". (DX 198, A. 1666-7)

On June 9, 1963 the Diocesan Plenum advised the Holy Synod that it could neither accept or reject the division of the American-Canadian Diocese but intended to refer the matter to the Church National Assembly called for August 6, 1963. Belgrade knew that the majority of the congregations to attend the August Church National Assembly opposed the division of the Diocese and that it had less than two months to implement its decision. (PX 15, A. 929)

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[2] Petitioners' quote of Article 2 at Page 31-A deletes the reference to the laws of the Kingdom of Yugoslavia which granted the Church quasi-legal and governmental functions such as jurisdiction over divorces, salaries for clergy, and National Church Status. The Church's governmental ties terminated with World War II.

The significance of the three administrators' June 10th report to Belgrade forwarding their opinion that "it is indispensable to rush trial against Bishop Dionisije and make a definite decision in connection with his schismatic actions and other wrongdoings . . ." and ". . . to publish at least proving material about his guilt, if not the final decision" before the August 6 Sabor meeting is now brought sharply into focus. (DX 198, A. 1671-2) In order to carry out the division and distribution it was necessary to discredit Bishop Dionisije before the August 6 Sabor meeting.

Pursuant to the direction of the three administrators, the Synod, on June 13, 1963, appointed a commission to investigate the charges against Bishop Dionisije. The commission was given oral orders to "do what was necessary". These investigators, under the clear provisions of the Belgrade Constitution, Article 219, should have been appointed before the suspension of Bishop Dionisije. Without reading the charges or conducting any investigation or hearing any witnesses they promptly scheduled a "hearing" of Bishop Dionisije on July 5, 1963. The hearing did not last a half an hour and there was no discussion of the charges against Bishop Dionisije. All they did was demand that he recognize the dissolution and division of the Diocese.

The following day, July 6, 1963, the investigating commission issued the requested proclamation, Plaintiff's

Exhibit 17, that Bishop Dionisije was guilty of offenses meriting the stripping of his Episcopal rank and excommunication from the church community. All clergymen, congregations and faithful were called upon to not recognize Bishop Dionisije, but to recognize the three administrators. (A. 982; A. 1812)

On July 18, 1963, Firmilian attempted to seize the bank accounts of the American-Canadian Diocese in the Bank of Libertyville. (A. 7) The Diocese filed suit to restrain the attempted takeover of the assets on July 26, 1963. (A. 1)

On July 27, 1963, a special session of the Holy Bishops Assembly was called which purported to depose Bishop Dionisije from his position as bishop of the American-Canadian Diocese. In their explanation to the American Serbs, as requested by the administrators, the Assembly explained that they were forced to depose him because of his disobedience to the division decision and "his many canonical offenses." (PX 55b, A. 1111) The canonical offenses were the personal charges and complaints which had not been given to Bishop Dionisije or investigated by the investigating commission.

At the same meeting Bishop Firmilian was elected bishop of the mid-west Diocese and Gregory elected bishop of the western Diocese.

In August, 1963, the Church National Assembly of the American-Canadian Diocese met in session and requested Belgrade to reconsider its dissolution and distribution of the property. The plea being rejected, the November, 1963 session of the Diocesan Assembly declared that it would no longer accept ecclesiastical-hierarchial decisions from Belgrade. Thereafter, Dionisije, having received the indictment, again requested copies of the charges but was refused. In March, 1964, without notice to Bishop Dionisije he was tried and defrocked upon an Amended Indictment.

The Property Grab By Belgrade's Administrator

What is it that Belgrade seeks to administer? Their bishops and the secretary of the church have testified that the American-Canadian Diocese has been amended out of the Belgrade Constitution, and as such, no longer exists. No further bishop is ever to be elected by the Holy Assembly to the American-Canadian Diocese. (R. 7643, A. 537)

What remains to be done with the American-Canadian Diocese? Bishop Nikanor testified:

> "The American-Canadian Diocese has not been completely liquidated. It remains for the Episcopal Bishop's counsel to arrange the internal affairs and then that will be the end of the American-Canadian Diocese. The assets there disposed of will then be distributed to the other three dioceses which would include giving Shadeland to the Eastern Diocese, Jackson to the Western Diocese and the Monastery in Libertyville to the Midwest American Diocese." (R. 1276-7, A. 182)

Bishop Visarion testified that the "reorganization" of the Diocese affected the ownership of the assets in that certain assets will be transferred to each of the three new Dioceses. (R. 1456, A. 212) In DX 198 Firmilian complained that he could not obtain control of the Libertyville property for the Midwest Diocese (A. 1667) and requested that the Shadeland Pennsylvania property be given to the eastern Diocese. (A. 1672)

What does the real party-in-interest, Firmilian, seek by these proceedings? His testimony tells you:

1. "If the court sees fit to grant me as administrator *control of the assets and properties* of the Serbian Eastern Orthodox Diocese of the United States of America and Canada . . ." (R. 7641, A. 536) (Emphasis supplied)

2. "If this *property* were turned over to me . . ." (R. 7825, A. 545-6) (Emphasis supplied)

Petitioner's attorneys maintain that this dispute is not a church property dispute. The evidence contradicts them because Firmilian seeks control of the assets of the Respondent, American-Canadian Diocese.

What are Firmilian's duties as alleged temporary administrator of the American-Canadian Diocese? He answered this question several times during his testimony:

1. "My duties are to put in effect all the decisions of the Holy Assembly of Bishops." (R. 7631, A. 536)

2. "My duty was to call the Church National Assembly, preside over it, read the decisions of the Holy Assembly of Bishops and Synod, and make provisions for the amendments in the constitution, send it to the Holy Assembly of Bishops for final approval." (R. 7632, A. 536)

3. "Then we shall call Sabor, Church National Assembly; three bishops together with Church National Assembly would make necessary amendments, send it to the Holy Assembly of Bishops for approval, and that's all." (R. 7637-8, A. 536)

4. It will be his duty to see that the decision of May 10, 1963 reorganizing or dividing the Diocese into three new Dioceses is approved by the Church National Assembly. (R. 7644-6, A. 537)

Who will attend the Firmilian Sabors? Only those faithful and clergymen who recognize the dissolution-division of the American-Canadian Diocese may participate in the meeting or use the property. Firmilian so testified:

1. "Dues paying members of the congregation of the Serbian Eastern Orthodox Diocese for the United States of America and Canada, who continued in the various parishes to pay their dues until the present time, are no longer members if they have not elected to follow the decision of May 10, 1963 recognizing the division of the diocese into three dioceses, with Bishops Gregory, Sava, and myself as Bishops. If this property were turned over to me, these people would have the right to use it only if they returned to the church and recognized the decision of May 10. Some of the priests who have elected not to obey the decisions of May 10, 1963 have been defrocked." (R. 7825-6, A. 545-6)

2. Members of the church who did not recognize the decisions of the Assembly left the church by their own action. (R. 7979, A. 548)

3. "Anyone who does not recognize the highest church authorities is no longer member of the church." (R. 7652, A. 537-8)

4. Any priest who was willing to accept the decision concerning the suspension of Bishop Dionisije but refused to accept the decision to divide the Diocese into three parts would not be permitted to participate in any Sabor held by the three new bishops. (R. 7661, A. 538)

5. Firmilian has suspended or defrocked some priests who have either remained loyal to Bishop Dionisije or have not recognized the division of the Diocese. (A. 546)

Bishop Firmilian's only claim for relief in this case is his claimed right to be "temporary administrator" of the American-Canadian Diocese pending disposition of the

penal proceedings. This right as temporary administrator arises as an incident of the penal proceedings.

The evidence demonstrates that instead of administering the American-Canadian Diocese and its assets it is his avowed duty and obligation to liquidate and distribute its assets to the other two petitioner bishops for use by the three new dioceses. The conduct of Firmilian, in collusion with Belgrade is part of a scheme to obtain control of the Diocesan property under the guise of penal proceedings in order to carry out the illegal dissolution-division decision of May 10, 1963. This is fraud.

III.

THE ILLINOIS SUPREME COURT DEPARTED FROM NEUTRAL PRINCIPLES OF LAW BY FINDING THAT THE EXISTENCE OF AN ALLEGED "RELIGIOUS UNANIMITY" PREVENTED THE ACTS OF THE PARTIES FROM BEING GIVEN THEIR LAWFUL EFFECT.

Prior to May 10, 1963, Article 15 of the Belgrade Church Constitution was the only reference to the American-Canadian Diocese found anyplace in that Constitution. It established a spiritual-hierarchical relationship which was sacremental in nature.

On May 10, 1963 the Holy Assembly of Bishops amended their own Constitution deleting the American Canadian Diocese from Article 15a and substituting in its place three new dioceses. (R. 497, A. 138; R. 1684-5, A. 237; R. 1693, A. 238; R. 807, A. 157; A. 1811)

Belgrade's right to discontinue the "spiritual-hierarchical" relationship with the American-Canadian Diocese by amending Aritcle 15 of the Church Constitution is unchallenged because no provision of either the Church or Diocesan Constitutions deny Belgrade the option of revoking its affiliation with the Diocese. The existence of the American-Canadian Diocese is not dependent upon affiliation with Belgrade. The amendment of Article 15a repealed the spiritual-hierarchical relationship theretofore existent between the American-Canadian Diocese and the Belgrade Church. Their right to create three, or any number of new dioceses, is unchallenged so long as the newly created dioceses do not claim the name or property of the American-Canadian Diocese.[1]

The American-Canadian Diocese, after its removal from the Belgrade Constitution in May, held a Church National Sabor in August and November, 1963. At the November Sabor the delegates from the congregations recognized the act of Belgrade as an effort to dissolve the relationship which previously existed. Consequently, a Resolution was passed declaring their freedom from the spiritual-hierarchical relationship with the Belgrade Church. Since then, the American-Canadian Diocese has existed with its own Bishops, clergy, property and congregations.

Since May, 1963, the three new dioceses have operated in a spiritual-hierarchical and administrative relationship with Belgrade. They have their own Bishops, clergy, property and congregations. Throughout this time they have claimed to be successors to the American-Canadian Diocese and have claimed through this litigation the bank accounts and the property of the American-Canadian Diocese.

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[1] A somewhat similar situation was presented in *Romanian Orthodox Missionary Episcopate* v. *Trutza*, 205 F.2d 107 (6th Cir. 1953) which recognized the right of an Orthodox Diocese to amend its constitution.

The Illinois Supreme Court, in its otherwise well founded opinion, departed from neutral principles of law and refused to recognize the legal effect of the amendment of May 10, 1963 because the Court found that there existed a "basic religious unanimity" wherein people of common faith joined together to further the practice of their faith. (A. 1832-33)

This finding was the basis for the Court's declaration that the American-Canadian Diocese and the Belgrade Church remained bound together in a spiritual-hierarchical relationship. The First Amendment prohibits a civil court from using the existence or non-existence of "a basic religious unanimity" as the basis of any civil court declaration, action or decision. *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*. 393 U.S. 440 (1969).

The actions of Belgrade and the American-Canadian Diocese have severed all ties between them. Membership in the respective groups is for the conscience of each individual member. The civil courts should not declare a religious unanimity.

IV.

THE PROCEEDINGS AGAINST BISHOP DIONISIJE WERE NOT CARRIED OUT IN ACCORD WITH EITHER THE PENAL CODE OR THE CONSTITUTION OF THE SERBIAN ORTHODOX CHURCH, IN VIOLATION OF BISHOP DIONISIJE'S RIGHTS AS A MEMBER OF A VOLUNTARY RELIGIOUS ASSOCIATION.

A. Civil Courts Will Enforce A Member's Rights to Fundamental Fairness.

The consideration by the Court below of the defrockment of Dionisije did not involve interference with church doctrinal issues. The Court merely sought to determine whether Dionisije had been tried in accord with procedures hitherto codified by Belgrade. Thus, insofar as Dionisije is concerned, this case concerns whether he, as a member of a voluntary religious association, was accorded those due process rights guaranteed under the constitutions, penal code and rules of the organization. If he was not, his defrockment should not be enforced by the Civil Courts.

This Court and those of the various states have always recognized that review is "appropriate" to insure that decisions of church tribunals are not the result of "fraud, collusion, or arbitrariness." *Gonzalez* v. *The Roman Catholic Archbishop of Manila,* 280 U.S. 1, 50 S. Ct. 5 (1929); *Presbyterian Church* v. *The Mary Elizabeth Blue Hull Memorial Church,* 393 U.S. 440, 89 S. Ct. 601, 605 (1969); *Kedroff* v. *St. Nicholas Cathedral of Russia O. Ch.,* 344 U.S. 94, 73 S. Ct. 1443 (1952); *Brundage* v. *Deardorf,* 55 F. 839, 847 (N.D. Ohio 1893); *LeDuc* v. *The Normal Park Presbyterian Church,* 142 F.2d 105 (1944); *Epperson* v. *Myers,* 58 So. 2d 150, 152 (Florida, 1952); *Hendryx* v. *Peoples United Church,* 84 P. 1123 (Wash. 1906); *Turbeville* v. *Morris,* 26 S.E. 2d 821 (1943); *Merryman* v. *Price,* 259 N.E. 2d 883 (Ind. App. 1970); *First Free Will Baptist Church* v. *Franklin,* 4 So. 2d 390 (Sup. Ct. Fla. 1941).

This Court stated in *Kedroff* that freedom to select the clergy "where no improper methods of choice are proved must be said to have Federal Constitutional protection." Circuit Judge Taft in *Brundage* held that a civil court could not accept a decision of the highest judicatory of a church as binding on a civil court where there was an open and avowed defiance of the original compact.

The Court of Appeals for the Seventh Circuit in *LeDuc* recognized the right of a church pastor to a full and fair judicial hearing and stated that the decisions of an ecclesiastical tribunal would be recognized "unless some civil right has been denied."

In *Epperson* the Court recognized the rule, stating:

> "These cases support the rule contended for by the Appellant but they also approve the exception when there is a showing of fraud, collusion or arbitrary conduct on the part of the church authorities, the courts will interfere to protect the rights of those imposed on."

The appropriateness of such minimal review is recognized by the Illinois Courts. In *Schweiker* v. *Husser,* 147 Ill. 399 (1893) the Court held that decisions of the highest church body would be recognized unless they were "manifestly violative of the constitution or laws of the Association, or in clear and palpable excess of its own jurisdiction . . ." An earlier case, *Chase* v. *Cheney,* 58 Ill. 509 (1871) contains a special concurring opinion in which the justices state that if a church tribunal has been organized in defiance of the laws of the Association and is exercising arbitrary power the courts will intervene to protect the clergymen. Moreover, both this court and the Supreme Court of Illinois have held in a variety of contexts that voluntary associations must afford their members certain minimal "due process" procedures prior to taking action which might seriously affect their substantive rights. *Silver* v. *New York Stock Exchange,* 372 U.S. 341, 364, 83 S.Ct. 1246 (1963); *Virgin* v. *The American College of Surgeons,* 42 Ill. App. 2d 352, 192 N.E. 2d 414 (1963); *Werner* v. *International Association of Machinists,* 11 Ill. App. 2d 258, 137 N.E. 2d 100 (1956); *Van Daele* v. *Vinci,* 51 Ill. 2d 389, 282 N.E.2d 728 (1972).

The civil courts have on a number of occasions rejected judicial decisions by churches where church procedures are ignored or subverted. Thus in *Kaminsky* v. *Hoynak,* 373 Pa. 194, 94 A. 2d 548 (Pa. Sup. Ct., 1953), the removal of a parish priest of the Carpatho-Russian Greek Catholic Orthodox of the Eastern Rite by his bishop was invalidated for failure to follow the procedure established in the constitution of the church. In *Baugh* v. *Thomas,* 56 N.J. 203, 265 A. 2d 675 (N.J. Sup. Ct., 1970) the New Jersey Supreme Court recognized the right of civil courts to invalidate an expulsion in violation of the established procedures of the church. Failure to give notice and an opportunity for a hearing invalidated an expulsion proceeding in *Taylor* v. *Jackson,* 273 F. 345 (Ct. App. D.C. 1921). Other cases include *State* v. *Ellis,* 140 S. 2d 194 (La. App. Ct., 1962). *David* v. *Carter,* 222 S.W. 2d 900 (Tex. Ct. Civ. App. 1949) and *Hendryx* v. *People's United Church,* 84 P. 1123 (Sup. Ct., Wash., 1906).

Petitioners argue, contrary to the well settled principles expressed above, that as the Serbian Orthodox Church is a "hierarchial" church, it is the "supreme interpreter of the internal church constitutional provisions," exempt from any judicial review. Hence, Civil Courts must invoke their judicial powers to enforce Belgrade's decisions.

This is not the law. A court, when requested by a religious body to enforce its mandate, is entitled to determine whether that mandate was exercised in the absence of "fraud, collusion, or arbitrariness." Here, such minimal review of the procedures involved demonstrates that Belgrade, in taking serious action against Dionisije, ignored its constitution and rules and hence is not entitled to obtain enforcement of its judgment in a Civil Court.

The issue presented by the proceedings against Bishop Dionisije is not concerned with the guilt or innocence of

Dionisije, but whether he was afforded those fundamental due process rights guaranteed to him by the Constitution and Penal Code of the Church. The Illinois Supreme Court found that the applicable provisions had not been followed. It did not engage in any review of the evidence concerning his guilt or innocence.

The rules of the church mandated procedures requiring notice to Dionisije and an opportunity to be heard in the protection and enforcement of his rights before a tribunal of competent jurisdiction in orderly proceedings. This was denied him in the following respects:

1. He was tried by a tribunal without competent jurisdiction. (See sub-point B, p. 24).

2. He was proclaimed guilty without investigation or hearing. (See sub-point C, p. 27).

3. He was deposed from the American-Canadian Diocese without trial. (See sub-point D, p. 29).

4. He was denied sufficient information necessary to prepare a defense. (See sub-point E, p. 31 and sub-point H, p. 36).

5. The alleged temporary suspension and transfer were violative of the Penal Code and Constitution. (See sub-point F, p. 33 and sub-point G, p. 35).

B. The Constitution of The Church and The Penal Code Vested Exclusive Jurisdiction of The Trial of Bishop Dionisije in The Holy Bishops' Synod—The Synod Did Not Try Bishop Dionisije.

The Constitution and Penal Code provisions, vested exclusive jurisdiction for the trial of Bishop Dionisije in the Synod, not the Holy Assembly.

1. Article 70 (35) A b (A. 1164) provides that the Holy Synod "Judges: (A) in the first instance: (b) canonical offenses of a Bishop"; (Constitution, PX 68)
2. Article 64 of the Penal Code (A. 1262) provides that "The Ecclesiastical Court which had competence to initiate the Due Process shall retain its competency until the Process is concluded." (PX 69).
3. Article 71 of the Penal Code (A. 1265) requires ". . . the Court shall vote on the transgressions, punishment, decree and judgment."

The foregoing provisions of the Constitution and Penal Code of the Serbian Orthodox Church were totally disregarded and violated in its proceedings against Bishop Dionisije. The Synod never rendered a judgment on Bishop Dionisije's case (R. 797, A. 156, R. 9611, A. 667-8), although it was the proper court.

Everybody involved in this case recognized the Synod as the trial court for Bishop Dionisije.

Bishop Dionisije—(DX 150, A. 1640-3; PX 84S, A. 1356; DX 258, A. 1765-6).

Mladen Mladenovich, General Secretary of the Holy Synod—(R. 686-8, A. 148).

Bishop Vasilije, Church Prosecutor—(R. 9611-3, A. 667-8)

Bishop Visarion, Author of Penal Code and Investigating Commission Member—(R. 1631-2, A. 233-4; R. 9884-9904, A. 683-4).

Holy Assembly of Bishops—(PX 2, A. 902).

Holy Synod—(PX 14, A. 928).

Zivan Stefanovich, Legal Adviser to the Synod—(R. 4634-51, A. 410-12).

As stated by the prosecutor in the indictment:

> *"Authorized the Holy Bishops' Synod*
>
> "I am finding: that the Holy Bishops' Synod of the Serbian Orthodox Church in accordance with Art. 70, P. 35 under b of By-Laws of the Serbian Orthodox Church and Art. 63, Rules and Regulations for The Ecclesiastical Courts in Serbian Orthodox Church, *is authorized to judge in first instance in case of guiltiness of Bishop Dionisije (sic) Milivojevicha."* (PX 16, Page 1, A. 930.)

The Holy Assembly which purported to try Dionisije is actually a court of review. Article 69 of the Constitution provides that the Holy Assembly "27. Adjudges . . . B In the second and final instance: all matters which the Holy Synod of Bishops judged in the first instance."

The Constitution of the Church clearly and explicitly limits the juridical authority of the Holy Assembly of Bishops to those cases ". . . within the scope of its authority (Article 69, § 28)." (Article 57 of PX 68).

In Bishop Dionisije's case, the Holy Assembly of Bishops should have been the Court of Appeals as provided for by Article 78 of the Penal Code. (PX 68). In those cases which the Holy Assembly of Bishops judges in the first instance, there is no right of appeal. (R. 9737; A. 845). Bishop Dionisije was denied the right of appeal guaranteed to him by the Constitution and the Penal Code.

Article 82 of the Penal Code (PX 69, Page 18) provides that upon Appeal, "The Court of second instance will annul the judgment decree of the Court of the first instance" if the Court of the first instance was "not competent for hearing the case", if "it was not properly and duly constituted" and if "in deliberations disqualified . . . persons participated."

Article 124 of the Constitution explicitly prohibits a member of the Court "who has participated in the investigation of the subject being adjudged" from taking part in the decision and "judging." (PX 68, Page 40).

The two members of the Investigating Commission, Bishops Visarion and Chrysostom, and the prosecutor, Bishop Vasilije, as well as the two bishops who gathered charges in 1962, Metropolitan Damaskin and Bishop Nikanor, participated and signed the judgment. Article 82 of the Penal Code requires the court of second instance to annul this judgment as disqualified persons participated. The command of Article 82 is not discretionary but is imperative.

The loss of his right of appeal prevented Bishop Dionisije from raising the jurisdiction of the body that tried him, the composition of the members of that body, the failure of that body to follow the obligatory procedures and the sufficiency of the evidence against him. The basic law of the church gave him that right but the Assembly denied him that right. The Assembly's disregard of Belgrade's own rules prevents an American civil court from enforcing its tainted judgment.

C. Belgrade Publicly Proclaimed Bishop Dionisije's "Guilt" Without A Hearing Or Investigation Of The Charges.

The Investigating Commission was appointed by the Synod on June 13, 1963, ". . . on the basis of Article 67 and 90 Church Code Procedure, . . . to fulfill necessary hearing of accused and witnesses, as well as to collect proofs and to submit findings . . . to the Holy Bishops' Synod for further procedure." (PX 84 L, A. 1355; R. 1576-7, A. 229; R. 763, A. 154)

The Commission was given oral directives by the Synod and Assembly to "do what was necessary." (R. 1610-1, A. 232; R. 9956; A. 689)

Arrangements were made to meet with Bishop Dionisije on July 5 in Libertyville. This was to be the hearing of the accused and his opportunity to examine witnesses.

Dionisije, in writing, requested the Investigating Commission "for the accusations to be duly presented to us in order to be able to reply to them." (DX 258, A. 1765)

Bishop Visarion testified that the Commission had the charges with them in a briefcase. (R. 1487, A. 218) Bishop Dionisije demanded to see the charges against him so that he could answer them. (PX 82, A. 1324). They did not show the charges to Bishop Dionisije. (R. 1490, A. 218) In fact, they had not even read the charges. (R. 1475, A. 216) The meeting lasted about one-half hour at most. (R. 1562, A. 228) No witnesses were heard.

Bishop Dionisije was denied legal counsel at the meeting. (R. 1602-7; A. 231; R. 6529; A. 489-90; R. 4726-31, A. 417-8; R. 4758, R. 1368; A. 494, A. 215).

The Commission did not hear any witnesses or take any evidence prior to meeting with Bishop Dionisije on July 5, 1963. (R. 1576-7; A. 229). Following the July 5, 1963 meeting, the Commission did not take any action to verify or investigate any of the charges made against Bishop Dionisije (R. 1585; A. 230).

The day following the alleged "hearing" the Investigating Commission distributed to the Serbian parishes and communities in America and Canada, a finding that Bishop Dionisije had trampled his oath, renounced obedience to the Church, and that he may be considered stripped of his episcopal rank and excommunicated from the church community. It further directed all American Serbs not to submit themselves under any circumstances to Bishop Dionisije (PX 17, A. 981). The document, drafted with the help of Firmilian, was issued by the Investigating Commission pursuant to their oral "discussions" with the Synod to do what was necessary (R. 1470; A. 215). At the time of issuance of this finding of guilt and denunciation of Dionisije, the Investigating Commission had not even opened or read the charges against him. (R. 1576-81, A. 229-30)

The hasty "hearing" and the public denunciation and finding of "guilt" of Bishop Dionisije by the Investigating Commission, with the assistance of Bishop Firmilian, was in direct furtherance of the three administrators' June 10 request to the Synod to rush the trial against Dionisije and make a definite decision regarding his guilt. (DX 198, A. 1671).

D. The "Trial" and Deposition of Bishop Dionisije of July 27, 1963 Violated The Penal Code and Constitution.

After publishing the broadside of July 6, condemning Bishop Dionisije, the Investigating Commission consecrated Bishop Stefan, and requested a special session of the Holy Assembly of Bishops held in Belgrade July 26 and 27, 1963.

All of the complaints and charges against Bishop Dionisije were read and circulated at the July 27, 1963 meeting, although none had been given the accused. Petitioners, thus, misrepresent in their Brief at pages 22 and 6a-7a that the personal charges were not considered by the Assembly. Their witness, Bishop Visarion, contradicts these assertions. (R. 1635-6, A. 234)

The "trial" and punishment violated every relevant provision of the Serbian Orthodox Church Constitution and its Penal Code, in the following respects:

1. Article 111 (A. 1181) requires a "canonical verdict" to be entered before the Holy Assembly may remove a bishop from his diocese involuntarily.

2. Article 70, Pt. 35 (A)6 provides that the Holy Synod "judges . . . in the first instance; canonical offenses of a bishop. . . ." (PX 68) (R. 4740; A. 419-20). The Synod must judge a bishop as the court of first instance; the Assembly, after "canonical verdict" may take the steps to remove him. In this instance the Assembly judged him and removed him. Article 69, P. 27 (B) expressly limits the jurisdiction of the Assembly to ". . . the second and final instance" of any matter which the Synod has jurisdiction of in the first instance.

3. Article 216 of the Constitution and 55 of the Penal Code provide that 'transfer to another place of service" and "loss of parochial service respectively any other position in the church", are "Church Penalties." (R. 4739; A. 419). Article 218 of the Constitution provides "that no one can be punished with any church penalty without prior hearing" (PX 68) as does Article 67 of the Penal Code. (PX 69). No hearing was ever given nor were any charges preferred at this time.

4. Article 217 of the Constitution requires that a penalty of transfer to another place for a period greater than 30 days can only be pronounced by the "jurisdictional Diocesan Ecclesiastical Court" (PX 68) which in this case is the Holy Bishops' Synod (Art. 70-35-A-b); (R. 4739; A. 419).

5. At the July 27, 1963 Assembly meeting, none of the provisions of Article 67 through 71 of the Penal Code requiring notice, hearing or indictment had been complied with.

E. Bishop Dionisije Could Not Defend Himself on The Indictment Without The Enclosures.

During the trial of the instant case Respondents presented over 30 witnesses whose names were extracted from the "enclosures" which were withheld from Dionisije.

The purpose of producing these witnesses was not to seek a review of the sufficiency of the evidence but:

1) To demonstrate that the Indictment, without the enclosures, was indefensible and fundamentally unfair.
2) To confirm that there was no investigation or hearing of the "witnesses" as required by the Penal Code or fundamental due process.
3) To show that the great bulk of the charges were not made upon the knowledge of the person who submitted the charge.
4) To prove that many of the charges were barred by the five-year statute of limitations established by the Penal Code.
5) To illustrate to the court that, taken as a whole, the Indictment did not in any manner reflect the true reasons for the prosecution of Bishop Dionisije, but was a sham.

Article 69 of the Penal Code requires that the Indictment contain an "exact citation of evidence." This evidence was refused Bishop Dionisije. More than 6 years later, when the "evidence" was produced in this case, the analysis established that the Indictment was so incredibly unfair as to be incapable of defense.

That examination of the Indictment reveals.*

A. 110 of the 125 accusations do not conform to the requirements of the Penal Code.

B. Of the 125 accusations, 14 omit both time and place, 33 omit time and 2 omit place. Eleven charges omit time, place and the names of the alleged victim or witnesses. Six charges omit either name, place or time.

C. 41 accusations, not included in the previous paragraph, are conclusions without any pretense of reciting the manner of commission, time or place. For example at page 7 "to all remarks and critics against his behavior and conduct, Bishop Dionisije is replying: 'and I am a live person and need everything as you.' "

After obtaining and examining the 23 enclosures and hearing the testimony of the witnesses the following facts were established:

A. 37 of the accusations are statements of persons other than writers of charges. An example is the first statement on page 2 attributed to Jovan Dutchith (who died in 1943) and quoted by Dusan Popovich in his 1962 memorandum. Of these 37 hearsay accusations: 9 are attributed to people who died before 1963. 16 are attributed to unknown and unidentifiable third parties. 3 were denied by the alleged third party under oath at trial. 2 were not confirmed by the alleged third party when the party took the witness stand during the trial. 5 were unsigned anonymous letters prohibited by Article 65 of the Penal Code and, of these 1 was denied by a witness designated in the unsigned submission, and by King Peter II, who gave his Evidence Deposition from his deathbed. 1 is attributed to a priest who died prior to trial. 1 contradicted Diocesan records after the author testified that the charge was something he had heard from his father before his father's death.

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* See appendix A to Brief of Appellant Dionisije in Illinois Supreme Court for witness list and record references.

B. None of the 23 enclosures were taken under oath by the Investigating Commission as required by the Penal Code. (R. 1367; A. 194)

C. 1 enclosure, DX 61, contains 25 of the accusations found in the indictment and is unsigned.

D. 2 enclosures are newspaper articles.

E. 4 enclosures, containing 17 of the indictment accusations, were written by priests who were defrocked or lost their position years before through misconduct and a verdict of the Diocesan Court of which Bishop Dionisije was President. (DX 148, 161, 172, 58 A and 164).

F. 11 of the indictment enclosures authors were called as witnesses by the Plaintiffs. None of them personally witnessed any sexual attacks, theft, or other alleged transgressions by Bishop Dionisije. These 11 authors accounted for 81 of the 125 accusations against the bishop.

G. The names of 35 alleged witnesses to accusations, were found in the enclosures but their names were omitted from the indictment.

Had the Investigating Commission read the charges, heard the witnesses, provided Bishop Dionisije with copies of the enclosures, and ruled out any unsworn or anonymous accusations as well as the newspaper articles, it would have found no case against Bishop Dionisije. But Belgrade intended to convict Bishop Dionisije from the very outset.

F. Bishop Firmilian Was Not Properly Appointed and Is Not Now The Temporary Administrator of the American Canadian Diocese.

The Holy Synod ordered the temporary suspension of Bishop Dionisije and the appointment of Firmilian during the pendency of the proceedings pursuant to their role as the "Diocesan Bishop" (Article 90—Penal Code) under the powers given the Diocesan Bishop by Articles 219 and 220 of the Constitution of the Serbian Orthodox Church (PX 1, A. 901).

Article 219 permits suspension "after the commencement of investigation." Bishop Dionisije was suspended on May 10 but the Investigators were not appointed until June 13, after the Administrator's request for a quick finding of guilt. The hasty suspension was part of the plan to redistribute the Diocesan assets. Had he been properly suspended, in the first place, the term of suspension would have ended twelve years ago.

Article 219 allows a temporary suspension, but provides that it shall remain only "until the verdict of the ecclesiastical court is rendered" and the ecclesiastical court "is obliged to make a decision within a period of one year." (A. 1827)

The suspension and appointment of an Administrator were incidental to the procedures of the Penal Code. These acts have no force and effect unless the proceedings against Bishop Dionisije have force and effect.

Petitioner Firmilian testified:

> ". . . my duties as administrator of the Serbian Eastern Orthodox Diocese of the United States of America and Canada were to continue until the guilt of Bishop Dionisije was conclusively investigated and judged.

> Bishop Dionisije's guilt was conclusively established by the Holy Assembly on March 5th 1964." (R. 7629, A. 535)

The Synod agrees. (Ex. A to Second Amend. Complaint, A. 50)

Petitioner Firmilian testified that in proceedings he brought against clerics:

> "A priest may be kept under suspension for only one year and at the end of that year they were automatically lifted." (R. 7833, A. 546)

At trial Petitioners proved that suspension was a temporary measure incidental to the Penal proceedings. (R. 3829-30, A. 397)

G. The "Transfer" of Bishop Dionisije to The Midwest Diocese Was A Penalty.

On May 10, 1963, the Holy Assembly of Bishops purported to transfer Bishop Dionisije from the American-Canadian Diocese to the Midwest Diocese, although Article 216 (4) of the Serbian Church Constitution provides that "transfer to another place of service" is a Church penalty. (PX 68, R. 4739, A. 419) Likewise, Article 55 of the Penal Code provides that "transfer to another place of service" is a Church penalty. (PX 69; R. 4737-9, A. 419)

The Constitution of the Serbian Orthodox Church prohibits the involuntary removal of a Bishop from his Diocese by the Holy Assembly of Bishops unless "upon canonical verdict." (Article 111, PX 68; R. 4739, A. 419) On May 10 there was no pretense that any "canonical verdict" had been rendered, or that the Holy Assembly of Bishops purported to exercise any authority under Article 111 of their Constitution.

The transfer was the imposition of a penalty upon Bishop Dionisije "without prior hearing" or "canonical verdict". Article 218 of the Constitution of the Serbian Orthodox Church requires a hearing before punishment. (PX 68) Father Stefanovich, the legal expert of the Patriarchate, so testified. (R. 4869, A. 428)

H. Bishop Dionisije Attempted to Participate in The Penal Proceedings But Was Prevented from Doing So by The Failure of Belgrade to Follow the Prescribed Procedures.

The best evidence of the unfairness of the indictment is the indictment itself. (PX 16, A. 930) A reading of the indictment reflects, upon its face, that it would be virtually impossible to formulate any sort of sensible reply to the myriad accusations, much less prepare any defense, without the "enclosures" or charges.

1. Bishop Dionisije Was Refused Copies of The Charges Against Him.

The charges given to the Investigating Commission for investigation and actually considered by the Holy Assembly of Bishops were secreted until the trial court ordered copies of them delivered in June, 1969.

The record reflects that Bishop Dionisije requested of either the Patriarch, the Synod, the Holy Assembly or the Investigating Commission, copies of any charges against him pursuant to the Articles of the Penal Code so that he might investigate them and make his reply to them in writing on the following occasions:

1. *December, 1962*—(R. 1342; A. 191)—Request of the 1962 Delegation.

2. *April 19, 1963*—PX 84 E—Letter to Patriarch.
3. *July 5, 1963*—DX 258, A 1765—Letter to Investigating Commission.
4. *July 5, 1963*—Orally before the Investigating Commission (R. 6527; A. 488).
5. *July 11, 1963*—DX 150, A. 1640—Request to the Synod.
6. *July 13, 1963*—DX 151, A. 1645—Letter to the Investigating Commission.
7. *August 8, 1963*—DX 240, A. 1703—Proclamation of of the 10th Church Sabor.
8. *November 18, 1963*—PX 84 S and 84 T, A. 1356, 1358—Letter to the Synod.
9. *January 13, 1964*—PX 84 V, (A. 1360)—Telegram to the Synod.
10. *January 25, 1964*—PX 84 W—Letter to the Synod.

The charges were never given to him.

Witness Father Zivan Stefanovich testified that the Penal Code contemplated that the accused must be acquainted with and received the documents and charges against him pursuant to the mandate of Article 67. (R. 4757; A. 422). In his 30 years of experience with the Penal Procedures of the Serbian Church, there was never a case in which the accused was denied the right to analyze the complaints and make copies of them. (R. 4855-6; A. 426). Metropolitan Damaskin admitted that it is customary to provide a clergyman copies of the charges against him. (R. 1368; A. 194).

Bishop Vasilije, the Church Prosecutor, testified that it is and was the custom and practice to provide the accused

with copies of the Complaints made against him. (R. 9667-8, A. 673).

2. A "Guilty Verdict" Against Bishop Dionisije Was Assumed from the Beginning of the Proceedings.

From May 10, the Belgrade Bishops and their three agents were certain of a finding of guilty and the deposition and defrockment of Bishop Dionisije.

Defendant's Exhibit 193 (A. 1650) are the minutes of the Holy Assembly of Bishops, of May 11, 1963, the day following the initiation of the charges. At page 2 of the minutes, Metropolitan Damaskin addressed the Assembly and told them that because of what they had done yesterday "it was necessary to elect *THREE* bishops", one of whom would be a lifetime appointee replacing Bishop Dionisije. The Patriarch moved the election of three new bishops, and the Assembly voted on the Motion, 10 bishops voting "Yes", but not quite a majority.

The highest legislative tribunal of the Serbian Orthodox Church, the Holy Assembly, voted to fill Bishop Dionisije's vacancy the day after it ordered the initiation of process. The highest executive authority of the Serbian Orthodox Church, the Synod, on May 17, 1963 knew that Bishop Dionisije was to be dissolved from his priestly services and discharged from governing the Diocese. (DX 194, A. 1656) The three plaintiffs demanded the guilty verdict regarding his "schismatic actions and other wrongdoings" before the August 6 Sabor meeting. (DX 198, A. 1661)

The record is bare of any suggestion by the legislative, executive, or judicial organs having jurisdiction, that Bishop Dionisije might be found not guilty.

3. Bishop Dionisije Was Not Given A Copy of The Indictment Upon Which He Was Tried.

Bishop Dionisije was not tried upon PX 16 (A. 930) the indictment forwarded to him. The trial disclosed that the following amendments were made to the indictment before submission to the Assembly for judgment:

1. The Court Prosecutor was permitted to "extend his indictment of the 16 of October, 1963, to include the offenses of Bishop Dionisije committed on the 13 and 14 of November, 1963, at the so-called X National Convention in Libertyville." (PX 21, p. 20, A. 1005)
2. Father Stefanovich, who drafted the judgment, testified that the Church Prosecutor amended the indictment upon a "joint report of Bishop Stefan, Firmilian and Gregory, of November 25, 1963." (R. 4897; A. 431)
3. Bishop Visarion testified: "I prepared a supplement to the original indictment on March 5, 1964. This supplement was not reduced to writing, but was delivered orally before the Holy Assembly of Bishops and, of course, Bishop Dionisie was not there. The supplement was not sent to him." (R. 9672-5, A. 673)

In the opinion of Father Stefanovich, these charges may have been the "most serious offense of Bishop Dionisije." (R. 4897; A. 431). But, they were never provided to the bishop as required by Article 70 and 67 of the Penal Code.

This judgment admits that it was based upon the amended indictment. (PX 21, p. 20, A. 1005). "Rudimentary due process" and "reasonableness" require that any accused be informed of all of the charges against him, before trial.

The law requires that proceedings of this nature by a church be treated the same as proceedings by other voluntary associations. *Gonzales* v. *Roman Catholic Archbishop of Manila,* 280 U.S. 1, 50 S.Ct. 5 (1929). See also *Virgin* v. *The American College of Surgeons,* 42 Ill. App. 2d 352, 192 N.E. 2d 414 (1963).

I. Petitioners Concede That Fraud and Collusion Vitiates the Belgrade Judgments.

Petitioner's Brief states at pages 45 and 46 that if Belgrade were guilty of fraud, this Court should not enforce the decisions of Belgrade. Petitioners concede that the concept of fraud does not involve "substantial danger of infringement on constitutional guarantees." Petitioners then mistakenly suggest that fraud is not involved in this case.

It has been Respondent's position from the initial pleadings that the proceedings against Bishop Dionisije were arbitrary, fraudulent or collusive.

"Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another." *Securities and Exchange Commission* v. *Capital Gaines Research Bureau,* 375 U.S. 180, 194, 84 S. Ct. 275, 284 (1963).

Petitioners err by assuming a fundamental difference in defining the three terms "fraud", "collusion" and "arbitrariness". Essentially, these three terms, taken together, denote those actions by a voluntary religious association which are fundamentally unfair. Certainly a person defrauded of his rights by a club, union or religious society should have relief in a civil court. It is, thus. unnecessary to distinguish between "fraud" and "arbitrariness", the purpose of all three terms in the context heretofore used is to insure fairness.

Bishop Dionisije has been unfairly treated by Belgrade. The record reflects "bad faith" in that Belgrade deliberately refused to follow its own rules.

Petitioners argue that this Court has never had occasion to apply the "Gonzalez Rule" in a church case. No stronger case of "fraud, collusion or arbitrariness" by a church against one of its members could be presented than the instant case.

CONCLUSION

Respondents pray that the decision of the Illinois Supreme Court be affirmed except

Respondents pray that this Court:

1) Affirm the holding of the Illinois Supreme Court that the attempted dissolution of the American-Canadian Diocese is unenforceable by the Civil Courts;

2) Affirm the holding of the Illinois Supreme Court that the appointment of the temporary administrator and the suspension, deposition and defrockment of Bishop Dionisije are unenforceable by civil courts.

3) Reverse the holding of the Illinois Supreme Court that the existence of "religious unanimity" prevents the parties from repudiating their former relationship.

Respectfully submitted,

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APPENDIX

APPENDIX A

STATEMENT OF FACTS

This church property dispute began on May 10, 1963 when the Serbian Church in Belgrade passed decisions purporting to liquidate the American-Canadian Diocese, replace it with three new dioceses and initiate penal procedures which resulted in the alleged defrockment of Bishop Dionisije, the bishop of the diocese. The following are the facts pertinent to this case.

The first known Serbian Orthodox Church in the United States was established in Jackson, California, in 1894, by Father Dabovich, a clergyman of the Russian Orthodox Church. At that time and until 1920, all of the Serbian Orthodox Churches in North America were under the jurisdiction of the Russian Orthodox Church. (R. 3419, A. 356; DX 30; A. 1573, 5365-66; A. 451, R. 1997, A. 271-2, A. 1803). By 1917 there were about 200,000 Serbs in America under the jurisdiction of the Russian Orthodox Church. (DX 33, A. 1599).

Before 1920, the Serbian Orthodox Churches in the United States organized and adopted their own constitution. The earliest minutes which could be found in the Archives of the American-Canadian Diocese are DX 30 (A. 1573), the minutes of the first Convention of the Serbian Orthodox Priests and People in America held on October 24, 1913 in Chicago, Illinois.

The minutes contain a good history of the Serbian Church in America. The issue placed before the first Convention was whether or not they were willing to organize all of the Serbian Church congregations into a diocese. At that time, they were affiliated with the Russian

Orthodox Church and expressed a desire to have the protection of the Metropolitan of Belgrade-Serbia. The minutes recount how the Russian Church was burdened and not able to tend to local Serbian needs. Unanimously, they voted to seek the protection of the jurisdiction of the Metropolitan and Archibishop of the Kingdom of Serbia.

DX 31 (A. 1588) are the minutes of the meeting of the 1916 Priest's Assembly held in Chicago, Illinois. His Grace, Bishop Evdokim, Archbishop of Aleutia and North America, a Russian bishop, presided. He reviewed the history of the Serbian Church in America under the Russian officiation. A "Normal Constitution for the North American Orthodox Diocese" of 1909 was accepted, except that the words "Russian Church" were deleted and the words "Serbian Church" were inserted in their place. The Serbian Churches in America were divided into four districts. Thirty-two Serbian Orthodox parishes in the United States were placed under the jurisdiction of Serbian Priest-aides to the bishop.

In 1917 Father Mardary, a Serbian, educated in the Russian Orthodox Seminaries was sent to America by the Russian Orthodox Church with the following directions:

> "Finding that the time is ripe that to the Serbs should be given a possibility that they, themselves, may organize their own church life in America, *the Holy Synod of Russian Church decided, for the purpose of organizing an independent Serbian Diocese, to send a known person and devoted penslavist and Serb, a candidate of Russian Academy, Father Mardary Uskokovich. He is appointed to be the chief of the serbian mission in America. His duty is:*
>
> "TO CALL A SERBIAN CHURCH-NATIONAL ASSEMBLY OF THE SERBIAN PRIESTS AND PEOPLE FOR THE ORGANIZING OF THE SERBIAN ORTHODOX CHURCH IN AMERICA.

> "In the name of the Russian Orthodox Church, I am notifying the Serbian priests and people and I am invoking God's blessing *for an independent church life of the Serbian people in America. . . .*
>
> "May Grace of our Lord Jesus Christ, and love of God the Father, and the communion of the Holy Spirit be with the faithful Serbian nation on its road of creating of the INDEPENDENT SERBIAN CHURCH IN AMERICA.
>
> Governing the North-American
> Orthodox Mission
> Bishop ALEXANDER" (DX 33,
> A. 1598, 1804)

Father Mardary was elected a bishop by the Russian Orthodox Synod, but was not consecrated. (R. 8594; A. 598).

Change of Affiliation

In 1921, as a result of Father Mardary's efforts, the reorganized Serbian Orthodox Church recognized the American Serbian Diocese and designated a bishop as the spiritual head of the diocese. Father Mardary was the assistant to this bishop until his election as bishop by the Serbian Orthodox Church in 1925. (DX 64, A. 1620).

On February 21, 1923, at a meeting of the Serbian Orthodox priests of America held in Gary, Indiana, Archimandrite Mardary was elected Vice-President and Secretary of the priest's conference. The meeting discussed, and Father Mardary explained, "about the position of this newly formed Diocese, about her affiliation towards the Church in the Kingdom of Serbs and Slovenes." (DX 37, A. 1602).

In 1924, he acquired 30 acres of land in Libertyville, Illinois which initially was to be used for an orphanage. (PX

130, A. 1450) In 1927, he organized and called a Church National Assembly embracing all of the known Serbian Orthodox Churches in the United States for the purpose of bringing them all together and uniting them under one constitution. (DX 49, A. 1605) At this meeting, the constitution (PX 30, A. 1019) of the Serbian Eastern Orthodox Diocese for the United States of America and Canada was drafted and adopted.

The constitution provided that the American-Canadian Diocese would rule and govern itself independently in all administrative affairs; would nominate and elect its own bishop to be consecrated by the Bishops of the Serbian Orthodox Church; and that the Diocesan Church National Assembly, also known as the Sabor, would amend the constitution. In 1928, the Holy Assembly of Bishops of the Serbian Eastern Orthodox Church, of Belgrade, Yugoslavia, approved the "autonomous administration" submitted to it by the American-Canadian Diocese, but struck out the provision authorizing the American Sabor to elect the bishop, and provided that all amendments of the American-Canadian Diocesan Constitution by the Church National Assembly would require the approval of the Belgrade Church. (DX 51, 1607, A. 1806). In substance, this is the constitution which remains in force and effect today. It is the only Diocese in the Serbian Orthodox Church with its own constitution. (R. 1453-55; A. 212, A. 1807)

The American-Canadian Diocese differs markedly from the dioceses located in Yugoslavia which do not have their own Constitutions. The American-Canadian Diocese has final authority, without review by Belgrade, over membership, priest selection, financial and educational policy, and control of local and diocesan property.

The approval (DX 51, A. 1607) notes that the bishop is the supervisor of the autonomous life in the spiritual or hierarchial sense. The American-Canadian Diocese retained its autonomy and independence, but affiliated itself sacramentally with the Serbian Orthodox Church. It is an autonomous church that has complete freedom in terms of its own Council, but is dependent upon another in a sacramental sense or for the consecration of its bishops. (R. 3783; A. 387; R. 3421; A. 360).

In 1927, a charter had been taken out in the name of the Serbian Eastern Orthodox Diocesan Council as an Illinois Not-For-Profit Corporation. This charter was allowed to lapse. (R. 7518; A. 528) In 1935, the Serbian Eastern Orthodox Diocese for the United States of America and Canada organized under the Illinois Religious Corporation Act. That corporation is one of the defendants. After Bishop Mardary's death on December 12, 1935, (PX 32, A. 1073) the Holy Assembly of Bishops appointed Bishop Irinej and later Bishop Damaskin as the Bishop of the Diocese. Damaskin visited the United States for about a year and returned to Yugoslavia in 1939.

In 1938, Bishop Dionisije was elected a Vicar Bishop. In 1939, he was elected the Bishop of the American-Canadian Diocese and confirmed by the King. (DX 29, R. 1350, A. 192, A. 1570) In April, 1940, he arrived in America to assume his duties. He was received by the Diocesan Council and began his duties as Diocesan Bishop, paid by the Royal Government of Yugoslavia and by the Diocese after World War II. (R. 6181, 6669-70, A. 471)

During World War II, many of the Bishops of the Serbian Church were interned. Bishop Dionisije and the American-Canadian Diocese continued to function. Following the war, the American-Canadian Diocese and Bishop Dionisije helped tens of thousands of Serbs to flee the oppression in their homeland and migrate to America as displaced persons. The Diocese flourished and new church congregations were founded. Each had its own by-laws and most were incorporated under the various laws of the State of their origin. Each is independent in the ownership of its property, management of its temporal affairs, and has the right to elect its Priest. (Art. 116, 147, PX 30, A. 1059, 1066) Each was entitled to send delegates to the Church National Assembly (Sabor) and participate fully. (Art. 15 & 16, PX 30, A. 1027) Sabors were held in the years 1948, 1952, 1956 and 1960. Many Serbian Nationalistic, Fraternal, Defense and Cultural Organizations sprang up, which, as well as Bishop Dionisije, were understandably critical of the Communist Regime of Yugoslavia following World War II. After the War, Bishop Dionisije did not travel behind the Iron Curtain because of declarations against him by the Government of Yugoslavia. (R. 8668; 9116-9; A. 605, 642-3) His nonattendance at meetings was acceptable to Belgrade.

The Property in Dispute

The American-Canadian Diocese grew from about 26 congregations in 1921 to approximately 70 in 1963. At issue is control of three substantial parcels of real estate.

St. Sava Monastery, Libertyville, Illinois, is composed of approximately 200 acres. The Monastery grounds contain a cemetery, large picnic grounds, facilities for children's summer camp which can comfortably house 160 children, the bishop's residence and the diocesan office and files. Since 1963, members of the American-Canadian Diocese have re-roofed the buildings, purchased and installed dining room and kitchen equipment, added an 80-bed wing

to the children's camp building, drilled new wells and established a complete printing shop capable of printing the diocesan newspaper, and Sunday School materials. (R. 8415-19; A. 580). All of these improvements have been paid for by donations from people supporting Bishop Dionisije and the American-Canadian Diocese. More than $300,000 has been raised and paid for these improvements. (R. 8423; A. 582)

The use of the premises, for the purposes intended by the Diocesan Constitution, has not been refused to anyone, since an unfortunate misunderstanding in 1963 and 1964. (R. 8416-8422; A. 581-2)

Shadeland Monastery, located near Springboro, Pennsylvania, is composed of approximately 1400 acres. It contains an Old Folks Home, a cemetery, picnic grounds, a children's camp with a capacity of about 100, a manmade lake, a chapel, and extensive farm operations. Since 1963 the two homes on the premises have been extensively remodeled, inside and out. The barns, milking facilities, silos, garages and tool sheds have been repaired and remodeled. New machinery, farm equipment and wells have been added. A new church is under construction for which $47,000 had been paid at the time of trial. Construction and payments have continued since then. (R. 8389-8407; A. 576-8)

This Monastery had an annual income of about $70,000 in 1969. No one is refused the use of the facilities and it has been used since 1963 by many who do not sympathize with the American-Canadian Diocese. (R. 8495-7, A. 590)

Since 1963, an estimated $120,000 in cash has been raised and spent on improving the Shadeland property (R. 8423; A. 582), in addition to many gifts of materials and supplies. (R. 8402-4; A. 577)

The St. Sava Mission is composed of 176 acres near Jackson, California. It contains extensive new dormitories for the children's summer camp with a capacity of 200 children. (R. 8424; A. 583) An Olympic-size swimming pool, completed after 1963, cost nearly $40,000. (R. 8463; A. 587) A new dormitory cost $100,000. The annual income from the Jackson operation is about $5000. Since 1963 $340,000 has been raised for the Jackson Mission by its Board of Directors from persons who support the American-Canadian Diocese. (R. 8423 and R. 8414-5; A. 582, 580)

There have been no limitations on the use of the premises which have been used by many people supporting the three new bishops. (R. 8414; A. 580)

Since 1963, members of the American-Canadian Diocese have made improvements to these three properties in excess of $750,000. (R. 8423; A. 582)

The American-Canadian Diocese is governed by the Church National Assembly (Sabor) composed of delegates and voting members of the constituent congregations. The Sabor elects a Church Diocesan Council which performs the executive functions of the Diocese during its term. The Bishop of the Diocese is President of the Diocesan Corporation, the St. Sava Monastery Corporation, and Diocesan Council.

The Diocesan property at Libertyville, Illinois is owned by the Serbian Orthodox Monastery of St. Sava, an Illinois not-for-profit corporation, having been transferred to that corporation from the Religious Corporation in 1945. (PX 136, A. 1459) This not-for-profit corporation was created pursuant to a December 7, 1944 Diocesan Council resolution. The resolution and by-laws of the Monastery Corporation were exhibits in the appeal to the Appellate Court, but were not placed in evidence in the trial of this case.

The Diocesan Constitution (PX 30, A. 1019) places complete and final control of the Diocesan property in the Church National Assembly and Diocesan Council. The Belgrade Church has no authority to manage or control the property and assets of the Diocese.

The Belgrade Church

The Serbian Orthodox Church of Belgrade, Yugoslavia, is a National Orthodox Church which traces its origin to the 13th Century when it was founded by St. Sava. It existed in the Kingdom of Serbia, being alternately suppressed and revived during various occupations of the Kingdom through the last 600 years. After World War I, the Kingdom of Serbia along with neighboring kingdoms were reformed by the Allied Powers into the Kingdom of Serbs, Croats and Slovenes. The King of Serbia was enthroned as the ruler of the new nation and the church became an integral part of the Kingdom. In 1920, the Serbian Orthodox Church was formed by the merger of seven independent churches of the region. In 1931, it adopted a constitution which was amended substantially in 1947. This constitution was admitted as PX 68 (A. 1136) and relied upon by all parties. There have been some amendments to this edition, but none that affect the issues presented, except the amendment of May 10, 1963 which removed the American-Canadian Diocese from the Serbian Orthodox Church Constitution and replaced it with three new dioceses. (R. 1685-6. A. 237, R. 496, A. 137, A. 1811)

The church's governing functions are divided among three branches. The Holy Assembly of Bishops is the legislative body composed of the bishops of the various dioceses. (PX 68, Art. 57 and 69, A. 1156, A. 1158-61, A. 1809) The Synod of Bishops is the executive body composed of four bishops and the Patriarch. (PX 68, Art. 59 and 70, A. 1156, A. 1162, A. 1809) The Patriarch is the presiding officer of the Holy Assembly of Bishops and the Synod. He is a bishop; the "first among equals."

The judicial authority of the church is supervised by the Supreme Ecclesiastical Court which oversees the Yugoslavian Diocesan Courts. (PX 68, Art. 71, A. 1175, A. 1809) Special judicial authority is vested in the Synod and the Assembly for particular cases. (PX 68, Arts. 57 and 59, A. 1156, A. 1809) This particular judicial authority is an important issue in the matter of the proceedings against Bishop Dionisije.

Article 14 specifies "the dioceses in the Serbian Orthodox Church", and lists the 24 dioceses located in Yugoslavia. (PX 68, Art. 14, A. 1141-2) Article 15 notes that besides the dioceses enumerated in Article 14 "in spiritual and hierarchial aspect" belong dioceses outside Yugoslavia. Prior to May 10, 1963, the American-Canadian Diocese was listed in subparagraph 1 of Article 15 as:

> "1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois."

The Assembly of Bishops amended this Article on May 10, 1963 by deleting the American-Canadian Diocese and, in its place, listing as paragraphs 1, 2 and 3 the three new Dioceses: Eastern, Midwestern and Western. (R. 807, A. 157; R. 1276, A. 182; R. 1693, A. 238; R. 1684-5, A. 236-7, A. 1811)

Serbian Church Penal Procedures

In 1961, the Serbian Orthodox Church adopted a revised Penal Code for Ecclesiastical Courts of the Serbian Orthodox Church. (PX 69, A. 1243) The Penal Code details the offenses, procedures, and punishments of the church. It supplements Articles 214 through 224 of the constitution which deal with church offenses and penalties. (R. 1388-90; A. 197)

Ecclesiastical-judicial authority is exercised against ordinary clergy and laity by the Diocesan Bishops, the Diocesan Ecclesiastical Courts, and the Supreme Ecclesiastical Court. (PX 69, Art. 63, A. 1261) In proceedings against a Bishop, "special judicial authority is exercised by those bodies provided for in Article 70, Pt. 35, and 69, Pt. 27 of the constitution." (PX 69, Arts. 63 and 90; A. 1261, 1270; PX 68, Art. 57, A. 1156)

Article 70, subparagraph 35 (A. 1164, A. 1815), of the constitution (PX 68) provides that the Holy Synod of Bishops judges "in the first instance . . . (b) canonical offenses of a Bishop." Article 69, subparagraph 27 B (A. 1161, A. 1815), provides that the Holy Synod Assembly of Bishops judges "in the second and final instance: all matters which the Holy Synod of Bishops adjudged in the first instance." Penal Code Article 64 (A. 1262) states that the court (Diocese, Supreme or Synod) "which had competence to initiate due process retains its competency until the Process is concluded."

Article 67 (A. 1263) of the Penal Code provides that the "competent Bishop," and in the case of an accused bishop, the Holy Synod, (PX 69, Art. 90, A. 1270; PX 68, Art. 70, Pt. 35, A. 1164) upon hearing a report concerning a transgression, shall evaluate the veracity and if the report is "founded" shall order that "due process" be initiated by an investigation. For this purpose, the Synod shall "through the clergy of both orders under his jurisdiction . . . examine and investigate the matter and conduct necessary hearings of the accused and of witnesses, as well as collect evidence. . . . No one can be punished by any church punishment without a prior hearing," and, this Article provides, "insofar as it exists, a copy of the written complaint may be sent to the accused, respectively, of the private complaint, so that he himself may reply in writing by his written explanation and hearing."

After the collection of "necessary facts and evidence is completed" (PX 69, Art. 68, A. 1263), if the matter is deemed serious, it is submitted to the court (Holy Synod in case of a bishop) and the court prosecutor must draft an indictment and return it to the court. (PX 69, Art. 69, A. 1264) The indictment must contain (1) the name of the accused, (2) the data concerning the competency of the court, (3) the transgression describing the time, place and manner, (4) the official designation of the transgression, (5) the exact citations of evidence, and (6) the signature of the Church Court Prosecutor. (PX 69, Art. 69, A. 1264)

The indictment is then submitted to the accused for his reply. (Art. 70, A. 1264) Upon receiving the reply, the court shall meet, study the sworn testimony and evidence, and vote on the transgression and the penalty. (PX 69, Art. 71, A. 1265)

Article 77 (A. 1266) provides that any judgment of the trial court ("courts of the first instance") which calls for loss of service, suspension of clerical function, or defrocking must be submitted to the reviewing court ("court of the second instance") for final review. A bishop's trial court is the Synod; the Appellate Court is the Assembly. (PX 68, Art. 70, Pt. 35, A. 1164 and Art. 69, Pt. 27, A. 1161)

Article 82 (PX 69, A. 1268) states that the reviewing court shall annul any judgment if (1) the trial court was not competent, (2) was not properly and duly constituted, or (3) if disqualified persons participated. Article 124 A. 1184, A. 1814) of the constitution (PX 68) explicitly prohibits a member of the court "who has participated in the investigation of the subject matter being adjudicated," from taking part in the decision and "judging."

Article 219 (A. 1223) of the constitution (PX 68) allows the Diocesan Bishop (Synod) to suspend a cleric from officiation "after the commencement of investigation" until the verdict of the Ecclesiastical Court is rendered when the offense is one which would cause scandal among the people. Matters of this kind are considered urgent and the appropriate court is obliged to make a decision within a period of one year.

Article 216 (A. 1222) of the constitution (PX 68) and Article 55 (A. 1257) of the Penal Code (PX 69) provide that transfer to another place of service is a church penalty for ordained members of the church. No one is to be punished with any church penalty without a prior hearing. (PX 68, Art. 218, A. 1223.)

Article 111 (A. 1181) of the constitution restrains the Holy Assembly of Bishops from removing a Diocesan Bishop from his diocese unless upon a "canonical verdict" or a release upon proof of incapacity, pension, or by establishing proof of "one of the conditions provided for in (Article 104)."

The Belgrade Decisions

Because of the increase in the number of church school congregations, the 1960 Church National Assembly and Bishop Dionisije requested the appointment of at least two Assistant Bishops. A Delegation was sent to Yugoslavia suggesting the appointment of such assistants in 1962. (PX 84I, A. 1353) The Diocese did not request division.

As a result of these requests, in 1962, the Belgrade Church sent a Delegation composed of Metropolitan Damaskin, Bishop Nikanor and Father Petrovich to the United States, ostensibly to look into the request. (PX 73, A. 1279, DX 117) Covertly, the Delegation solicited charges against Bishop Dionisije. (R. 1046, 6407; A. 166, A. 481) The Delegation advised the American-Canadian Council that Belgrade would consider the election of Vicar Bishops for the American-Canadian Diocese, but that election of Vicars by the people in America could cause the Church problems in Yugoslavia. (PX 115, A. 1426) Bishop Dionisije was promised copies of the collected charges against him but did not receive them. (R. 6344; A. 478)

During early May, 1963, the Holy Assembly of Bishops met in Belgrade, Yugoslavia. In the session of May 10, 1963, the Assembly of Bishops amended the Constitution of the Serbian Orthodox Church and deleted the American-Canadian Diocese from Article 15. In its place were substituted Paragraphs 15-1, 2 and 3, establishing the three new Dioceses, the Western, the Midwest and the Eastern. (R. 495-6, A. 137-8; R. 1686, A. 237; R. 1693, A. 238; PX 4, A. 908) On the same day, the Assembly of Bishops directed the Synod of Bishops to initiate legal proceedings against Bishop Dionisije under the Penal Code (PX 69) and Constitution (PX 68) of the Serbian Orthodox Church upon the basis of written complaints which the Synod had received and those developed by the 1962 Delegation. Bishop Dionisije was allegedly transferred to the Midwest Diocese. (PX 4, A. 908)

The next day, May 11, the Assembly discussed the election of three new Bishops, one of whom would replace Bishop Dionisije. Although a majority of Bishops present voted in favor of this proposal, the Constitutional majority required was not achieved. An alternative proposal, the election of one new Bishop for the Eastern American Diocese did pass.

The Synod, acting under the authority of Articles 67 and 90 of the Rules and Procedures for Ecclesiastical Courts of the Serbian Orthodox Church, as well as Articles 219 and 220 of the Constitution of the Serbian Orthodox Church, suspended Bishop Dionisije from the performance of his priestly duties. (PX 3, A. 905). Incidental thereto, Bishop Dionisije was requested to relinquish the government of his Diocese to Firmilian Ockoljich, as his temporary Administrator pending the Investigation, Hearing and Judgment. Firmilian, Gregory and Stefan were appointed Administrators of the three new Dioceses by the Synod on May 17, 1963. (PX 7, A. 915)

Bishop Dionisije first learned of the Belgrade actions when he received a copy of a public letter from Belgrade sent to all of the clergy, congregations and certain prominent laymen in the American-Canadian Diocese. Bishop Dionisije then sent his own letter to the same persons on May 25, 1963 (A. 1281-88). In that letter, the Bishop repeated the text of the Belgrade circular and set forth his position concerning the May 10, 1963 decisions. He noted that the Constitutions of the Diocese and the Church forbade the division of the American-Canadian Diocese without its prior consent. His suspension was in violation of Article 218 of the Church Constitution because it was a penalty without a prior hearing as guaranteed by that Constitution. The Bishop stated publicly his willingness to be tried by any Court, under proper procedure, because he did not feel himself guilty of any offenses. He attributed the decisions to pressure placed upon the Serbian Orthodox Church by the government of Yugoslavia noting that less than a year before Metropolitan Damascan, representing the Church, had requested a working relationship with the Yugoslavian Council. Bishop Dionisije repeated his opposition to the Communist Government of Yugoslavia and requested the various congregations, clergy and laymen to resist the division of the Diocese.

By June 3, an official letter concerning the May 10 decisions had reached Bishop Dionisije and he wrote a letter dated June 3, 1963 to the Synod, (A. 1271-1277). In that letter, the Bishop noted that the decisions of May 10 were contrary to the Constitution of the Church stating: "I recognize, besides God's, certainly the competence of the Holy Bishop Assembly and Synod when they do in compliance with canonical and legal rules." He then notes that paragraphs 218, 219 and 220 of the Constitution and 67 of the Penal Code were not followed in the procedure instituted against him. He reviewed the history of some earlier complaints by left-wing organizations and nonmembers of the Serbian Orthodox Church and requested that he be given a copy of the charges against him so that he might answer. The Bishop had not received any charges and did not know the reasons for his suspension.

On May 30, Bishop Dionisije wrote to the appointed administrator, Reverend Firmilian. (A. 1440-1) He informed Firmilian that he could not surrender his duties until the meeting of the Sabor (Assembly), and that if the Sabor requested that he surrender his duties, he would do so. He expressed his conviction to Reverend Firmilian that the decision from Belgrade was influenced by the Yugoslavian Government and that he would continue to oppose this "unjust and uncanonical decision."

On June 6, a meeting of the Diocesan Plenum, an organization of approximately thirty-five people including the Diocesan Council and governing boards for the Diocesan properties, composed of elected lay and clergy members, met in Libertyville to discuss the May 10 decisions. They decided to advance the date for the Diocesan Sabor (Assembly) to August, 1963. All but five or six of the persons attending that meeting expressed the belief that the Diocesan Constitution forbade the division of the Diocese without its prior consent. Reverend Firmilian, in a private memorandum to Belgrade several days later, admitted that the leadership of the Diocese and the majority of its congregations believed that the Diocese could not be properly divided without its prior consent. (A. 1661-73)

Thereafter, the Diocesan Council and members of the Diocese, as well as Bishop Dionisije, replied to Belgrade that they did not recognize the dissolution of the American-Canadian Diocese and the establishment of three new Dioceses in the United States and Canada, and requested a prompt hearing and disposition of the charges against Bishop Dionisije. (PX 15, A. 929) The Church National Assembly was advanced from October to August by a unanimous vote, including the vote of Reverend Firmilian. (R. 3330; A. 342, 358; PX 198, A. 1661)

On June 13, 1963, the Synod, acting upon the authority vested in it by Article 90 of the Penal Code, appointed the

Investigating Commission to carry out the mandates of Article 67 of the Penal Code. (PX 14, A. 928) This Investigating Commission was composed of Bishops Visarion and Chrysostom, as well as Arch-Priest, Mladen Mladenovich, Secretary to the Synod.

By, mail, arrangements were made to meet with Bishop Dionisije and the Investigating Commission on July 5, 1963 at Libertyville. On that day the Investigating Commission arrived, bringing with them in a briefcase all of the written charges against Bishop Dionisije and the various documents which later formed the basis for the Indictment and Judgment. (R. 1577-8; A. 229) Arrangements were made at a nearby restaurant for a private room.

Bishop Dionisije delivered a letter to the Investigating Commission at their meeting on July 5, 1963. (PX 258, A. 1765) In that letter, he first noted that he had never accepted the title of Bishop of the Midwestern American Diocese and that he should not be so addressed. Concerning the charges against him, he wrote: "We did not try to avoid any responsibility. We asked for the accusations to be duly presented to us in order to be able to reply to them. So far we have not received them. If we get them from you, we will try to answer the same. Verbal accusations and questionings we do not accept and consider illegal."

As soon as the three Bishops had closeted, Bishop Dionisije was asked whether or not he recognized the dissolution of the American-Canadian Diocese, the establishment of three new Dioceses, and the redistribution of the Diocesan property. Bishop Dionisije replied that the May 10 decisions were unlawful and then demanded copies of the charges against him. (R. 6527-9, A. 488; R. 1580, A. 229)

The Investigating Commission refused to show him the charges against him, and they were never removed from the briefcase, nor even read by the Investigating Commission. (R. 1577-8; A. 229) The Investigating Commission then concluded that there was no point in carrying out any further hearing (R. 1581; A. 230); the whole matter having been concluded in less than half an hour. (R. 9221; A. 652-3) The Investigating Commission made no investigation of the charges. (R. 1585, A. 230)

On July 6, the Investigating Commission, with the help of Firmilian, drafted and issued a Proclamation from Milwaukee directed to all of the Serbian Churches and members of the Serbian Orthodox Faith in the United States of America and Canada, stating that Bishop Dionisije was guilty, should be considered stripped of his episcopal rank, and deserved excommunication from the Church. All American Serbs were directed not to recognize him under any circumstances. (PX 17, A. 981, A. 1812)

A special session o fthe Assembly of Bishops was thereafter scheduled without notice to Bishop Dionisije, for July 26 and 27 in Belgrade, Yugoslavia. Bishop Visarion returned to Belgrade and reported to the Holy Assembly of Bishops that Bishop Dionisije had failed to recognize the Court of the Holy Synod, the division of the Diocese, and the judicial competence or jurisdiction of the Holy Synod. The Holy Assembly then voted that he was guilty and deposed him as Bishop of the Midwest Diocese. This was the first "trial" of Bishop Dionisije.

After deposing the Bishop from the Midwest Diocese, the Assembly elected Reverend Firmilian Bishop of the Midwest American-Diocese and Reverend Gregory Bishop of the Western American Diocese. These two Bishops were appointed for their life times and as of the date of their election there were no vacancies for Diocesan Bishops in the Serbian Orthodox Church. Article 218 (A. 1223) of the Serbian Church Constitution provides that no person can be punished without a prior hearing.

In August 1963, a session of the American Church National Assembly (Sabor) was held in Libertyville, Illinois, pursuant to a call which had been issued earlier in the year, although the date of the meeting had been advanced to August for the purpose of considering the emergency. The August Sabor issued a Resolution to the Belgrade Church authorities challenging their right to dissolve the American-Canadian Diocese and dispose of its organs and property. (DX 240, A. 1703) The August Sabor was recessed until November in hope that the Assembly of Bishops would withdraw the decision. The plea of the Sabor was rejected.

In November, 1963, the recessed session of the Diocesan Sabor, having been rejected by Belgrade, reinstated, in substance, those provisions of the original Diocesan Constitution allowing it to elect its own Bishop and amend its Constitution without submitting the Amendments to Belgrade for approval. (PX 84CC, A. 1369)

In September, 1963, the Holy Synod, acting as the Court to try Bishop Dionisije, appointed a prosecutor who drafted an Indictment (PX 16, A. 930) based upon the charges and complaints which the Investigating Commission had returned to the Synod without investigation. The Indictment was forwarded to Bishop Dionisije in October. It was 37 pages long and contained multiple references to "enclosures" which were the written complaints and letters from various accusers. Bishop Dionisije received the

Indictment, but did not receive any of the "enclosures" referred to in the Indictment.

The Indictment of Bishop Dionisije charges him with rape, seduction, homosexuality, theft, ownership of property (not an offense in the Serbian Church), and refusal to obey the order dividing the Diocese and redistributing its property among the three new Dioceses. Contrary to the requirements of the Penal Code, the Indictment fails to specify time and place for most of the alleged transactions committed by the Bishop. The enclosures to which it refers, which were not given to Bishop Dionisije, were later ordered produced by the trial court. Examination of those enclosures indicate that more than thirty alleged witnesses were omitted from the Indictment.

The indictment charges offenses occurring in 1934-1963, citing some statements of alleged witnesses including persons who had been dead as long as sixteen years prior to the drafting of the Indictment. During the trial of the case, most of the living persons named in the Indictment as witnesses of the alleged transactions were produced by the Defendants and they testified, without exception, that they had never made the charges attributed to them, that they had never witnessed or had any knowledge of any wrongful conduct by the Bishop, and that no investigating commission from Belgrade ever asked them about the charges. Some of the persons who wrote accusations against Bishop Dionisije testified during the trial stating they had no personal knowledge of the charges which they made. Not one witness of the more than fifty who testified concerning the Indictment could testify to direct knowledge of any moral misconduct as charged in the Indictment.

The many witnesses produced at trial by Defendant to testify concerning the charges attributed to them by the

Indictment were produced, not to prove the falsity or the truth of the charges, but to establish that Belgrade never made any attempt to determine the truth or falsity of the charges through normal investigation as required by the Penal Code of the Church.

In November, Bishop Dionisije wrote to the Synod and requested copies of the "enclosures" as well as an extension of 6 months by reason of an automobile accident and the length of the Indictment. In December, the Synod, acting as the Court, refused to provide him with copies of the "enclosures" and granted him 30 days in which to answer the Indictment. (PX 84 T, A. 1358) In January, 1964, Bishop Dionisije returned the Indictment to the Synod with the statements that he could not answer the Indictment as there were no "enclosures"; the Synod and Assembly were not following the Penal Code and Constitution; no investigation had been carried out; and he could not bring his witnesses 6,000 miles to Belgrade for trial. (PX 84 W, A. 1360)

Thereafter, on March 5, 1964, amendments to the Indictment were allowed which were never forwarded to Bishop Dionisije. (R. 9672-5; A. 673) On March 5, 1964, the Synod did not rule upon the case or Indictment pending before it. Instead, the Assembly of Bishops took up the matter and tried Bishop Dionisije finding him guilty of the charges contained in the original Indictment and the Amended Indictment. He was removed from his episcopal rank and defrocked as a Priest. (PX 21, A. 989) The Bishop received no notice of this trial date. (R. 6579; A. 495) This was the second trial.

The Present Status

The three new Dioceses continued to operate as separate entities with their own Bishops and Diocesan organs. They have established new Churches and ordained Priests. They have held their Sabors.

The American-Canadian Diocese has held its Sabors in 1963, 1966 and 1969, and continued in possession of its property, making improvements to it in excess of $700,000.00 (R. 8423; A. 582-3) Likewise, it maintains its own Bishops, Diocesan organs, and has established new Church congregations. The majority of the Church congregations in existence in 1963 retained their allegiance and loyalty to the American-Canadian Diocese and its Bishop (DX 240, A. 1703), while a minority and many of the new congregations established by the three new Dioceses have given their allegiance to and become members of the three new Dioceses.

The three new Dioceses held a Church National Sabor in 1964 composed only of people who recognized the dissolution and division and the three new Bishops. (R. 7651-2; A. 537) Any Priests or people recognizing Dionisije or the American-Canadian Diocese were excluded. (R. 7656; A. 538) In the Plaintiff's view, the only persons who can be members of the Serbian Orthodox Faith in America and Canada are those baptized Orthodox Serbs who pay dues and accept the decision of May 10, 1963 as to the division of the American-Canadian Diocese and the defrockment of Bishop Dionisije. (R. 7648-61, A. 537-8, R. 7825-26, A. 545-6) It is the duty of the new Bishops to implement the decision of Belgrade to divide the Diocese and disburse the property among the three new Dioceses. (R. 7632; 1276; A. 536, A. 182)

There has been no communication between the Belgrade Church and the American-Canadian Diocese since 1963. When Firmilian attempted to seize the American-Canadian bank accounts, this litigation began.

APPENDIX B

The Exhibits used herein and the pages of the Record where each was admitted in evidence are as follows:

PX	Record	DX	Record
1	R. 2931	29	R. 5408
8	R. 2931-3	30	R. 5408
14	R. 2932-3	31	R. 5408
16	R. 2932-3	33	R. 5421
17	R. 2915	37	R. 5408
20	R. 2933	51	R. 5408
21	R. 2933	58A	R. 8322
30	R. 2949	61	R. 8323
55b	R. 2988	148	R. 6485
68	R. 3031	150	R. 6553
69	R. 3036	151	R. 6568
84V	R. 3152	161	R. 6740
84W	R. 3153	164	R. 6747
128	R. 3157	172	R. 6923
		194	R. 7594
		198	R. 8336
		220	R. 8340
		240	R. 9319
		243	R. 9356
		249	R. 9358
		250	R. 9359
		258	R. 9989